IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.887 OF 2006

Sau. Rekha D. Badiyani, .. Petitioner
Vs
W.M.D.C. & Ors. .. Respondents

Ms Deepa S Matwankar, i/b Mr J.N.Pawar, for the petitioner.

Mr Avinash Fatangare, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 17.10.2006

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr.Fatangare, learned counsel, waives service for the respondents. By consent, Rule is heard finally.

3. The order dated 21.10.2005 passed by the trial Court on the application filed by the petitioner-defendant for setting aside "No W.S." order dated 29.9.2004, is under challenge in the present writ petition under Article 227 of the Constitution of India. The petitioner’s application has been rejected holding that the cause shown for condonation of delay in filing the application and seeking permission to file the written statement, was not sufficient. The petitioner is the original defendant no.1. Admittedly, the summons was served upon defendant no.1 and the last date for

filing the written statement was 28.1.2004. "No W.S." order was passed on 29.9.2004 and the application for setting aside "No W.S." order was filed on 31.1.2005. The ground mentioned in the application was her illness and the medical certificate in support thereof was also produced on record. However, the medical certificate pertains to the period from February 2004 to June 2004. Taking that into consideration and the two applications at Exhibits 12 and 13 dated 25.2.04 and 22.2.04 respectively, which did not disclose the ground as reflected in the application for setting aside "No W.S." order the trial Court has rejected the application. It appears that defendant no.3 had also filed an application for setting aside the very same order dated 29.4.2004 and his application was allowed subject to payment of cost of Rs.1000/- vide order dated 21.10.2005. It further appears that defendant no.3 had filed the application for setting aside "No W.S." order immediately after the said order was passed and insofar as the petitioner is concerned there was delay of about three months in filing the said application. It may be noted that in the reply to the application for setting aside "No W.S." order, the respondent-plaintiff, in the alternative, has stated that the order may be set aside subject to payment of cost of Rs.2000/-. Admittedly, the suit has not proceeded even upto the stage of

framing of issues. Keeping that in view, in my opinion, no prejudice whatever would be caused to the plaintiff if "No W.S." order is set aside. Considering the overall facts and circumstances of the case, I am satisfied that interest of justice would be met by the following order.

(a) The order dated 21.10.2005 is quashed and set aside. The Application at Exhibit-17 filed by the petitioner-defendant no.1 for setting aside "No W.S." order dated 29.9.2004 stands allowed. Consequently, "No W.S." order dated 29.9.2004 is quashed and set aside. The written statement, which has already been placed on record by the petitioner, be taken on file subject to payment of cost of Rs.2000/- to be paid to the respondents-plaintiffs within two weeks from the date of receipt of this order.

(b) In the circumstances, this writ petition is allowed in the aforesaid terms. Rule is accordingly made absolute.

(D.B.BHOSALE,J.)